

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5944

PETITION OF BRIAN SHEEHAN
(Hearing held December 3, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, February 11, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(a). The petitioner proposes to enclose the existing carport which requires a variance of nine (9) feet as it is within twenty-one (21) feet of the front lot line (Rutley Road) and to construct a one-story addition that requires a variance of nine (9) feet as it is within twenty-one (21) feet of the front lot line (Rutley Road). The required front lot line setback is thirty (30) feet.

The subject property is Lot 3, Block M, Stratton Wood Subdivision, located at 6708 Tusculum Road, Bethesda, Maryland, 20817, in the R-90 Zone (Tax Account No. 00669751).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to enclose the existing 12 x 23 foot carport and construct a 10 x 12 foot one-story addition.
2. The petitioner testified that the prior owners of the property received a variance in 1962 to construct a single-family dwelling and that a carport was added and the siting of the residence was reversed. See, Exhibit No. 3(c) [BOA Opinion CBA-1272].
3. The petitioner testified that originally the address of the property was Rutley Road and that he was unaware and could find no information regarding when the address was changed to Tusculum Road.
4. The petitioner testified that the existing carport is located in the western front yard setback and that he proposes an addition to the structure that would extend the same distance from the western front yard setback. The petitioner testified that the enclosure of the carport and the one-story addition would have a continuous roofline.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The carport has existed on the property for over 40 years. The enclosure of the existing carport will not increase or expand the footprint of the structure. The carport received a variance to permit its construction. The addition will follow the same wall-line as the carport and will be the same distance from the front yard boundary as the carport. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations will result in practical difficulties for the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the enclosure of the existing carport and for the construction of a one-story addition are the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds the construction, as proposed, will not materially impact the view from the neighboring properties and that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of nine (9) feet from the required thirty (30) foot front lot line setback for the enclosure of the existing carport and of nine (9) feet from the required

thirty (30) foot front lot line setback for the construction of a one-story addition are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 12(a) through 12(h).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 11th day of February, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.